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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/998,145	11/30/2001	Brandon R. Mackay	14591.11	4556
22913	7590	02/11/2004	EXAMINER	
WORKMAN NYDEGGER (F/K/A WORKMAN NYDEGGER & SEELEY) 60 EAST SOUTH TEMPLE 1000 EAGLE GATE TOWER SALT LAKE CITY, UT 84111			BRITTAIN, JAMES R	
			ART UNIT	PAPER NUMBER
			3677	
DATE MAILED: 02/11/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/998,145

Applicant(s)

MACKAY ET AL.

Examiner

James R. Brittain

Art Unit

3677

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 January 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☒ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☒ Newly proposed or amended claim(s) 14 would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:


Claim(s) allowed: 14-16.

Claim(s) objected to: 11, 12 and 18-20.

Claim(s) rejected: 1-10, 13, 17 and 21-23.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

  
James R. Brittain  
Primary Examiner  
Art Unit: 3677

Continuation of 2. NOTE: The removal of "each" in claim 10, line 5 is a new issue requiring further search and consideration since the scope of the claim has been broadened to only require the first connector to have the hollow chamber and opening structure. The proposed amendment to claim 10, comprising "the opening has a hole having a slit adjacent thereto" is a new issue because it substitutes "has" for —comprises— found in objected to claim 11 and is of different scope. This issue occurs in wider scope in claim 17, which does not incorporate the subject matter of objected to claim 18, nor objected to claim 11, which requires the statement that "each opening comprises a hole having a slit adjacent thereto". Claim 17 is proposed to only require a hole and slit extending through the tubular wall, not "each opening comprises a hole having a slit adjacent thereto" from claim 11, and this is a new issue. The proposed amendment to claim 22, comprising "wherein each of the first and second connectors has a hole therein and a slit therein adjacent to the hole" is a new issue because it does not incorporate the subject matter of objected claim 11, which requires the statement that "each opening comprises a hole having a slit adjacent thereto". Leaving out "each opening" is a new issue. The use of "hollow member" in claims 1 (two occurrences), 8 (two occurrences), and 21 (two occurrences) is a new issue requiring further consideration because the term is not used in the specification as filed and is different from terminology already used and raises the issue of a difference in scope that is unclear. The description of the hollow member "gripping" or that it "grips" the temple or earpiece (claims 8 and 21) is a new issue requiring further search or consideration and while this was discussed at the interview of 4/23/03, it was not presented until now, and as indicated in the examiner interview summary record there was no indication at the interview that the subject matter of "frictionally gripped" in combination with retainers and eyeglasses would be found allowable.